

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-3523

FILED 12 10 31

In Regard to the Matter of:

UNITED STATES
DISTRICT COURT

Bayside State Prison
Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

RENEE ACEVEDO

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * *

FRIDAY, JANUARY 23, 2009

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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4 Transcript of proceedings in the above
5 matter taken by Theresa O. Mastroianni, Certified
6 Court Reporter, license number 30X100085700, and
7 Notary Public of the State of New Jersey at the
8 United States District Court House, One Gerry Plaza,
9 Camden, New Jersey, 08102, commencing at 12:23 PM.

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A P P E A R A N C E S:

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ATTORNEYS FOR THE DEFENDANTS

1 JUDGE BISSELL: I'm reopening
2 proceedings in the matter of Renee Acevedo,
3 docket number 08-3523.

4 This opinion is being issued pursuant
5 to the directives of the Order of Reference to a
6 Special Master and the Special Master's Agreement and
7 the guiding principles of law which underlie this
8 decision to be applied to the facts upon which it is
9 based as set forth in the jury instructions in the
10 Walker and Mejias jury charges to the extent
11 applicable to the allegations of Mr. Acevedo.

12 As finalized after review under Local
13 Civil Rule 52.1, this transcript will constitute the
14 written report required under paragraph seven of the
15 Order of Reference to a Special Master.

16 Mr. Acevedo was housed in E Unit at the
17 time of the lockdown in late July and August of 1997.
18 He testifies as to three particular incidents in
19 which he alleges to one extent or another he was
20 assaulted. I will recount them by way of summary as
21 follows: He said one of them occurred upon his
22 extraction from his cell for the cell to be searched
23 and his temporary removal to the gym for that
24 purpose. This, of course, was being done by SOG
25 officers. He alleged that there were strikings

1 against him to some extent and that he had bumped
2 into a dog handler in the course of that extraction.
3 However, even his descriptions indicate minimal
4 impact which do not rise to the level of excessive
5 force, even if I assume and accept that they
6 occurred.

7 He also makes allegations of a dog
8 walking on him in the gym, I believe while he was in
9 place at the rear of the gym, walking across the
10 backs of his legs while his legs were crossed.
11 However, that testimony was well refuted by that of
12 the SOG K-9 Officer Ruiz who testified later in these
13 proceedings. Officer Ruiz testified that he was one
14 of two SOG K-9 officers who had their dogs with them.
15 His was a Rottweiler, as best I can recall, and that
16 of his fellow officer was a German Shepherd.

17 He testified unequivocally that no such
18 event occurred in connection with any patrolling that
19 he did in the gym with his dog and, furthermore,
20 testified that as far as the training for the
21 handling of dogs by K-9 officers when used in a
22 situation such as this, that they were never handled
23 in such a fashion, they were kept at a distance from
24 the inmates to be sure for the purposes of
25 controlling them, if necessary, but among other

1 things, to avoid any accidental bites. And that the
2 sort of bumping or walking on an inmate and any
3 reaction that inmate might have had to such a dog
4 would have been exactly the sort of thing that might
5 have provoked the dog and what the officers were
6 trained to avoid.

7 So I find that Officer Ruiz's testimony
8 here is by far the more credible and that while Mr.
9 Ruiz and his dog may well have been in the gym at the
10 time Mr. Acevedo was, there was no such sort of close
11 contact as Mr. Acevedo recounts.

12 The second and third incidents about
13 which Mr. Acevedo testified involve later alleged
14 intrusions into his cell by Sergeant Mitchell and
15 other officers. These included homosexual slurs and
16 are described in his transcript of August 15th at
17 pages 15 through 16, namely the first of those
18 incursions, and then page 19, the second incursion.

19 I find, frankly, that those incidents
20 are fabricated. At most, the credible evidence in
21 the record as a whole indicates that he may have been
22 confronted in his cell about yelling out of his
23 window, as were other inmates in that area of E Unit
24 who apparently had been engaged in the same conduct.

25 In this case there was a thorough

1 Internal Affairs investigation done and a report
2 prepared and that's reflected in D-386 in evidence
3 which I have examined very closely.

4 There have been occasions, frankly,
5 when some of the Internal Affairs reports I thought
6 were incomplete and -- perfunctory would be too
7 strong a word, but at least not as complete or
8 professional as one would have expected. That is not
9 the case here. The Internal Affairs Officer Riggins,
10 as I said, undertook a thorough investigation, took
11 statements, gave his own assessment as he's trained
12 to do and concluded as do I that the allegations
13 which he investigated and which are the same as those
14 asserted by Mr. Acevedo here in this court are
15 unsubstantiated and unproven.

16 Finally, although not every item of
17 evidence has been discussed in this opinion/report,
18 all evidence presented to the Special Master was
19 reviewed and considered. For the reasons set forth
20 above I recommend in this report that the district
21 court enter an order and judgment of no cause for
22 action with regard to Renee Acevedo.

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C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Theresa O. Mastroianni
Theresa O. Mastroianni, C.S.R.
Notary Public, State of New Jersey
My Commission Expires May 5, 2010
Certificate No. X10857
Date: February 10, 2009